

REMARKS/ARGUMENTS

Claims 1, 4, and 6-11 are pending. Claims 1, 4, and 6-11 have been rejected.

Claim Rejections - 35 U.S.C. § 112

Claim 7 has been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner rejected Claim 7 for lacking antecedent basis for the limitation "the box area" in line 1 of Claim 7. Responsive to the Examiner's rejection, Applicants have amended Claim 7 to delete the term "the" and replace the same with the term "a", so that line 1 of Claim 7 now reads "a box area". As a result of this amendment, there is now sufficient antecedent basis for all the terms in Claim 7 and Applicant respectfully requests removal of the 35 U.S.C. § 112 rejection.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 1 and 4 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,168,629 to Timoteo ("Timoteo '629") in view of U.S. Patent No. 5,732,606 to Chiang ("Chiang '606") in further view of U.S. Patent No. 7,131,973 to Hoffman ("Hoffman '973").

Applicants respectfully submit that independent Claim 1 is not obvious over Timoteo '629 in view of Chiang '606 in further view of Hoffman '973. Specifically, independent Claim 1 calls for a driver including, *inter alia*, a shaft having a fastener engaging end, a driven end, and a longitudinal axis therebetween, the shaft having an intermediate portion offset radially away from the axis, the engaging end and the driven end being coaxial, the shaft structured and arranged such that during application of the rotational forces to the driven end the intermediate portion rotates about the longitudinal axis.

In forming the rejection, the Examiner relies on the combination of Chiang '606 and Hoffman '973 as disclosing or suggesting all of the relevant limitations of the driver called for in independent Claim 1.

Referring to Fig. 3 of Chiang '606, Chiang '606 discloses a screwdriver including handle 10 rigidly secured to tube 20 and having flexible coil 41 of extension 40 rotationally secured thereto.

Thus, during rotation of handle 10, tube 20 correspondingly rotates flexible extension 41 in the direction of the arrows of Fig. 3. Rotation of flexible extension 41 transmit rotational force to tool 50 to cause tool 50 to advance a screw or other component. Thus, as handle 10 rotates, flexible portion 41 will rotate about its own longitudinal axis, but will otherwise remain in substantially the same position.

Hoffman '973 discloses bone anchor implantation device 610 shown in Fig. 13, including shaft 612 and handle 616 which is rotatable relative to shaft 612. Shaft 612 further includes straight proximal section 615, first generally bent section 617, generally straight medial section 618, second bent section 620, generally curved section 622, and generally straight section 624. By applying a retrograde force to handle 616, bone anchor 629 may be driven into pubic bone 630.

In forming the rejection, the Examiner relies on the disclosure of Hoffman '973 for teaching a general shape and configuration into which the flexible screw driver of Chiang '606 may be positioned. Assuming, *arguendo*, that the screwdriver disclosed in Chiang '606 is arranged such that flexible shaft 40 of the same is positioned as shown in Fig. 13 of Hoffman '973, the shaft of the screwdriver of Chiang '606 would fail to be structured and arranged such that an intermediate portion thereof rotates about the longitudinal axis of the shaft, as called for in independent Claim 1. By utilizing the flexible shaft of Chiang '606, if the intermediate portion of the shaft of the flexible driver was offset radially away from the longitudinal axis of the shaft, i.e., the axis extending between the driven end and the fastener engaging end as called for in independent Claim 1, to have a shape similar to that shown in Fig. 13 of Hoffman '973, the intermediate portion of the shaft would fail to rotate about the longitudinal axis during application of rotational force to the driven end, as required by independent Claim 1.

Specifically, the flexible screwdriver of Chiang '606 is designed such that the flexible section rotates along the entirety of its own longitudinal axis. Thus, each discrete section of the shaft rotates about its own longitudinal axis, i.e., rotates in a substantially stationary position. Thus, during rotation of the shaft, the entirety of the shaft remains in substantially the same position along its own longitudinal axis eliminating any movement of the flexible shaft in a radially outward direction. As a result, the intermediate portion fails to rotate about a longitudinal axis between the driven end of

the shaft and the fastener engaging end of the shaft, as defined by independent Claim 1. , and which provides an intended benefit of the device of the present invention.

The Examiner's additional citation of Timoteo '629 fails to overcome the deficiencies of Chiang '606 and Hoffman '973, as Timoteo '629 is directed to specific aspects of a femoral implant. Thus, none of Timoteo '629, Chiang '606, and Hoffman '973, either alone or in combination, disclose or suggest a driver meeting the limitations of independent Claim 1.

For at least the foregoing reasons, Applicant respectfully submits that independent Claim 1, as well as Claim 4 which depends therefrom, is not obvious over Timoteo '629 in view of Chiang '606 in further view of Hoffman '973.

Claims 6-10 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Publication No. 2003/0225457 to Justin et al ("Justin '457") in view of Chiang '606 in further view of Hoffman '973.

Applicant respectfully submits that independent Claims 7 and 10 are not obvious over Justin '457 in view of Chiang '606 in further view of Hoffman '973. Specifically, amended independent Claim 7 calls for a driver including, *inter alia*, a shaft having a fastener engaging end, a driven end, and a shaft axis therebetween, the engaging end and the driven end being coaxial, the shaft having an intermediate portion between the fastener engaging end and the driven end, the intermediate portion having a first bend axially spaced a first distance from the fastener engaging end, a second bend offset radially from the shaft axis a second distance, and a third bend axially spaced a third distance from the fastener engaging end, the shaft structured and arranged such that during application of the rotational forces to the driven end the second bend rotates about the shaft axis.

Similarly, amended independent Claim 10 call for a combination of an implant and a driver, the driver including, *inter alia*, a shaft having a fastener engaging end and a driven end, the engaging end having a longitudinal engaging end axis, the shaft having an intermediate portion between the engaging end and the driven end that is offset radially from the engaging end axis a distance equal to or greater than the patellar flange height such that the driver is engageable with a fastener along the fastener axis and the intermediate portion of the shaft both clears the apex of the patellar flange and rotates about the engaging end axis when the driver is rotated.

In forming the rejection of independent Claims 7 and 10, the Examiner relies on the combination of Chiang '606 and Hoffman '973 as disclosing or suggesting all of the relevant limitations of the drivers called for in independent Claims 7 and 10.

For the same reasons as set forth above with respect to independent Claim 1, if the screwdriver disclosed in Chiang '606 is arranged such that flexible shaft 40 of the same is positioned as shown in Fig. 13 of Hoffman '973, the shaft of the screwdriver of Chiang '606 would fail to provide a second bend that rotates about a shaft axis defined between a fastener engaging end and a driven end, as called for in independent Claim 7, and would fail to provide an intermediate portion offset radially from an engaging end axis that rotates about the longitudinal engaging end axis when the driver is rotated, as called for in independent Claim 10.

The Examiner's additional citation of Justin '457 fails to overcome the deficiencies of Chiang '606 and Hoffman '973, as Justin '457 is directed to specific aspects of a femoral implant. Thus, none of Justin '457, Chiang '606, and Hoffman '973, either alone or in combination, disclose or suggest a driver meeting the limitations of independent Claims 7 and 10.

For at least the foregoing reasons, Applicant respectfully submits that independent Claims 7 and 10, as well as Claims 6, 8, and 9 which depend therefrom, are not obvious over Justin '457 in view of Chiang '606 in further view of Hoffman '973.

Amended independent Claim 11 is rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,005,018 to Cicierega et al. ("Cicierega '018") in view of Chiang '606 in further view of Hoffman '973.

In forming the rejection of independent Claim 11, the Examiner relies on the combination of Chiang '606 and Hoffman '973 as disclosing or suggesting all of the relevant limitations of the step of providing a driver as called for in amended independent Claim 11.

For the same reasons as set forth above with respect to independent Claim 1, if the screwdriver disclosed in Chiang '606 is arranged such that flexible shaft 40 of the same is positioned as shown in Fig. 13 of Hoffman '973, the intermediate portion of the shaft of the screwdriver of Chiang '606 would fail to both clear the apex of the patellar flange and rotate about the engaging end axis when the driver is rotated, as called for in amended independent Claim 11.

Application Serial No. 10/750,439
Amendment dated June 6, 2008
Reply to Office Action dated February 11, 2008

The Examiner's additional citation of Cicierega '018 fails to overcome the deficiencies of Chiang '606 and Hoffman '973, as Cicierega '018 is directed to specific aspects of a femoral implant. Thus, none of Cicierega '018, Chiang '606, and Hoffman '973, either alone or in combination, disclose or suggest a driver meeting the limitations of independent Claims 7 and 10.

Thus, for at least the foregoing reasons, Applicant respectfully submits that amended independent Claim 11 is not obvious over Cicierega '018 in view of Chiang '606 in further view of Hoffman '973.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested. Specifically, Applicants respectfully submit that the application is in condition for allowance and respectfully requests allowance thereof.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

[THIS SPACE INTENTIONALLY LEFT BLANK]

Application Serial No. 10/750,439
Amendment dated June 6, 2008
Reply to Office Action dated February 11, 2008

Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



Matthew B. Skaggs
Registration No. 55,814

Attorney for Applicants

MBS

BAKER & DANIELS LLP
111 East Wayne Street, Suite 800
Fort Wayne, IN 46802
Telephone: 260-424-8000
Facsimile: 260-460-1700

CERTIFICATION OF ELECTRONIC FILING

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office on the date indicated below:

MATTHEW B. SKAGGS, REG. NO. 55,814

Name of Registered Representative



Signature

June 6, 2008

Date